

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROXANA BERENICE CASTRO AJMAD,

Plaintiff,

-against-

DWIGHT CRESCIONI, et al.,

Defendants.

23-CV-05776 (MMG)

**ORDER ADOPTING**  
**REPORT &**  
**RECOMMENDATION IN**  
**PART**

MARGARET M. GARNETT, United States District Judge:

**BACKGROUND**

Plaintiff Roxana Berenice Castro Ajmad filed this action against Defendants Dwight Crescioni, Wellsure Corporation, Ranjit Hewavitarne, and FCB Commodities LLC on July 6, 2023, by filing a Complaint.<sup>1</sup> *See* Dkt. No. 1.

On December 22, 2023, Judge Vernon S. Broderick, the District Judge who was then-assigned to this case, referred the case to Magistrate Judge James L. Cott, the assigned Magistrate Judge at the time, for General Pretrial Supervision.<sup>2</sup> *See* Dkt. No. 16. The case was subsequently reassigned to the undersigned on March 4, 2024.

Judge Cott filed a Report and Recommendation on August 6, 2024, recommending that Plaintiff's case against Defendants Dwight Crescioni, Wellstone Corporation, and Ranjit Hewavitarne be dismissed without prejudice for failure to prosecute, and that Plaintiff be directed to address why her claims against Defendant FCB Commodities LLC should not be dismissed for failure to prosecute. *See* Dkt. No. 37. Plaintiff filed a letter on August 20, 2024, in which she argued that her claims against FCB Commodities LLC should not be dismissed for

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<sup>1</sup> Defendant Tyrone Crescioni was subsequently added as a necessary party. *See* Dkt. No. 35.

<sup>2</sup> The case was redesignated to Magistrate Judge Henry J. Ricardo on August 27, 2024.

failure to prosecute. *See* Dkt. No. 38. Plaintiff did not object to any other portion of the Report and Recommendation, including the recommendations that Defendants Dwight Crescioni, Wellstone Corporation, and Ranjit Hewavitarne be dismissed without prejudice. On October 30, 2024, Plaintiff filed a motion for default judgment against Defendants FCB Commodities LLC and Tyrone Crescioni. *See* Dkt. No. 39.

### **LEGAL STANDARD**

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). A district court “must determine de novo any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). To accept those portions of the report to which no timely objection has been made, however, a district court need only satisfy itself that there is no clear error on the face of the record. *See, e.g., Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

In the present case, the Report and Recommendation directed that the parties had fourteen days from receipt of the Report and Recommendation to file any objections and warned that failure to timely file such objections would result in waiver of any right to object. *See* Dkt. No. 37 at 8–9. In addition, the Report and Recommendation expressly called Defendants’ attention to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). *See id.* at 9.

### **UNCONTESTED RECOMMENDATIONS**

As of the date of this Order, as explained, Plaintiff has not objected to those portions of the Report and Recommendation recommending that the Plaintiff’s claims against Defendants Dwight Crescioni, Wellstone Corporation, and Ranjit Hewavitarne be dismissed for failure to

prosecute. Accordingly, Plaintiff has waived the right to object to those portions of the Report and Recommendation or to obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *see also Caidor v. Onondaga County*, 517 F.3d 601 (2d Cir. 2008).

Despite the waiver, the Court has reviewed the Report and Recommendation and finds the uncontested portions to be well-reasoned and grounded in fact and law. Accordingly, the recommendations that Plaintiff's action against Defendants Dwight Crescioni, Wellstone Corporation, and Ranjit Hewavitarne be dismissed without prejudice are ADOPTED.

### **PLAINTIFF'S OBJECTION**

Judge Cott noted in the Report and Recommendation that for the first time on June 17, 2024, Plaintiff submitted an affirmation of service dated July 27, 2023, which demonstrated that Defendant FCB Commodities LLC was served through the New York Secretary of State on July 27, 2023. *See* Dkt. No. 26-2; Dkt. No. 37 at 7. That Defendant has not filed an answer or appeared in the action, and Plaintiff has taken no further action against that Defendant. Judge Cott recommended that Plaintiff be directed to address why her claims against that Defendant should not be dismissed for failure to prosecute. *See id.*

Plaintiff filed an objection to that portion of the Report and Recommendation in which she argued that her claims against FCB Commodities LLC should not be dismissed. In the letter, Plaintiff explained that she had not moved for default judgment against that FCB Commodities LLC in order to conserve judicial resources while she was attempting to resolve issues with serving the other Defendants in this case. *See* Dkt. No. 38. Furthermore, Plaintiff filed a motion for default judgment against Defendants FCB Commodities LLC and Tyrone Crescioni on October 30, 2024. *See* Dkt. No. 39.

Because Plaintiff has addressed her failure to prosecute and has filed a default judgment motion, the portion of the Report and Recommendation concerning FCB Commodities LLC is respectfully REJECTED AS MOOT.

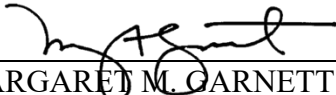
**CONCLUSION**

For the foregoing reasons, Defendants Dwight Crescioni, Wellstone Corporation, and Ranjit Hewavitarne are dismissed without prejudice for failure to prosecute, and the Clerk of Court is directed to terminate those Defendants.

By separate order, the Court will refer the pending motion for default judgment to Magistrate Judge Ricardo for a Report and Recommendation.

Dated: November 18, 2024  
New York, New York

SO ORDERED.

  
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MARGARET M. GARNETT  
United States District Judge